

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.17/04

Thursday this the 3rd day of March 2005

C O R A M :

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

K. Thankachan,
S/o.Karutha Kunju,
(Retired Senior Gang Mate/
Southern Railway/ Mavelikkara),
Residing at Kallukuzhiparambil Veedu,
Kottarkavu, Mavelikkara, Alleppey District. **Applicant**

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Union of India represented by
the General Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai - 3.
2. The Chief Engineer/Construction
Southern Railway, Egmore, Chennai - 8.
3. The Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum - 14.
4. The Senior Divisional Accounts Officer,
Southern Railway, Trivandrum Division,
Trivandrum - 14. **Respondents**

(By Advocate Mr.P.Haridas)

This application having been heard 3rd March 2005 the
Tribunal on the same day delivered the following :

O R D E R

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

The applicant who commenced service as a casual labour under the Permanent Way Inspector/Construction/Southern Railway, Quilon on 27.3.1972 was transferred to work under the control of Inspector of Works/Construction/Quilon under whom the applicant worked without break up to 21.12.1975. He was transferred back to work under the Permanent Way Inspector/Construction/Southern Railway/Quilon on 21.12.1975. Thereafter he was transferred to work under the control of the Permanent Way Inspector/Open

Line/Mavelikkara on 29.11.1976. After serving continuously thereafter he was absorbed as a Gang Man with effect from 25.1.1979. He retired on superannuation on 31.5.2003. His grievance is that while finalising his terminal benefits his qualifying service was computed only with effect from the commencement of regular service as Gang Man and the period of casual service was not at all reckoned. According to the applicant he having continuously served as a casual labour from 27.3.1972 onwards he is entitled to have 50% of the service rendered between 27.9.1972 to 25.1.1979 reckoned as qualifying service for pension. Therefore the applicant has filed this application for a declaration that he is entitled to reckon 50% of the service between 27.9.1972 and 25.1.1979 for the purpose of pension and other retirement benefits and for a direction to the respondents to re-calculate and revise the pension and other terminal benefits of the applicant accordingly and to make available to him the monetary benefits.

2. The respondents contend that the service of the applicant under the Construction Organisation cannot be reckoned as qualifying service for pension, that he having been granted temporary status by Annexure R-1 order only with effect from 23.10.1978 half the period of service thereafter prior to his regular absorption and the entire period of regular service has been reckoned as qualifying service for pension and therefore the applicant is not entitled to the reliefs sought. Respondents contend that the original casual labour card and the details of the applicant's engagement having not been preserved there is no basis for the applicant's claim. Since the applicant had not

accepted the correctness of Annexure R-1 the respondents have along with reply statement produced a photo copy of the original order.

3. I have carefully perused the entire materials on record and have heard the learned counsel on either side. From Annexure A-1 casual labour card it is seen that the applicant commenced his service under the Construction Organisation on 27.3.1972 and he joined Open Line on 30.11.1976. Shri.T.C.Govindaswamy, learned counsel of the applicant, argued that this Bench of the Tribunal had in O.A.808/97 following the ruling of the Apex Court in Robert D'Souza's case held that the applicant in that case could not be considered as a project casual labour since the facts of the case was similar to the case in Robert D'Souza's case counsel argued that the facts of the case are also similar and therefore the service rendered by the applicant in Construction Wing also is to be reckoned for the purpose of calculating qualifying service for pension. I do not find that the applicant has been able to establish the facts of the case on hand and the facts of the case in Robert D'Souza' case are identical in nature. While the respondents have contended that the applicant was a project casual labour, no document or material has been brought on record by the applicant to show that the applicant was working in Open Line or in a non project Construction Organisation. However I have to examine the case of ^{as seen} the applicant whether at any time prior to 23.10.1978 the applicant had become entitled to the attainment of temporary status. In terms of para 2501 of the Indian Railway Establishment Manual a casual labourer who had rendered a continuous service of 120 days would be entitled to temporary

status and counting of 50% service thereafter as qualifying service for pension. It is not disputed that the applicant was transferred to the control of Permanent Way Inspector Open Line and that he joined there on 30.11.1976. This fact is also evident from Annexure A-1 casual labour card. The genuineness of Annexure A-1 is not disputed. Counting the service of the applicant from 21.12.1976 to 20.4.1977 I find that the applicant had completed more than 120 days of continuous service during this period, for, no unauthorised absence is noted during this period. Therefore, the applicant having attained temporary status on 20.4.1977 the respondents were bound to reckon half the period from 20.4.1977 also as qualifying service for pension and terminal benefits of the applicant.

4. In the light of what is stated above the application is allowed in part. The respondents are directed to revise the pension and other terminal benefits of the applicant reckoning half the period from 20.4.1977 till 23.10.1978 also as qualifying service for pension. The above direction shall be complied with, revised PPO issued and arrears of pension and other benefits disbursed to the applicant within a period of three months from the date of receipt of a copy of this order.

(Dated the 3rd day of March 2005)


A.V. HARIDASAN
VICE CHAIRMAN

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